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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/849,240	05/07/2001	Matthew B. Studholme	T2316-907194	8050

7590 04/25/2003

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EXAMINER

HAMPTON HIGHTOWER, PATRICIA

ART UNIT

PAPER NUMBER

1711

DATE MAILED: 04/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/849,240

Applicant(s)

STUDHOLME ET AL.

Examiner

Patricia Hightower

Art Unit

1711

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/11/02, 6/17/02, 12/18/02, 1/2/03.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-104 is/are pending in the application.
- 4a) Of the above claim(s) 35-104 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-34 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 May 2001 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 4-5, 10.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Election

Applicant's election with traverse of Group I, claims 1-34 in Paper Nos. 8 and 9 is acknowledged. The traversal is on the ground(s) that "all claims presented are susceptible of being examined based upon a single examination search. As stated in MPEP 803, if the search and examination of an entire application can be made without serious burden, the examiner must examine it on the merits, even though it includes claims to independent or distinct inventions; and the applicants' further argue that the receipt of the "Written Opinion" mailed in connection with the corresponding PCT application No. PCT/US01/49386 in which the "Written Opinion" contained an initial search of all claims 1-104. Thus, it is no serious burden presented in examining this same set of claims in the U.S. application. In an absence of a serious burden, the M.P.E.P. instructs that the entire application must be examined." This is not found persuasive because in the PCT application there is a certain time period in which a "Lack of Unity of Invention" can be instituted; and said time period had passed when the undersigned examiner received said PCT application. Therefore, no "Lack of Unity of Invention" was implemented. Further, the inventions of Groups I - XVI are directed to patentably distinct products and methods which are capable of supporting individual patents. The applicants are reminded that they are entitled to claim only one type of product. See MPEP 808.01 and 806.04. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

Art Unit: 1711

Upon reconsideration and it being determined the "election of species requirement" has been hereby expressly withdrawn. Furthermore, the claims of Group II have been joined to Group I which now consists of claims 1-34.

The requirement is still deemed proper and is therefore made FINAL.

Claims 35 -104 have been withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper Nos. 8 and 9.

Information Disclosure Statement

The information disclosure statements filed June 11, 17, 2002 and January 02, 2003 have all been considered and have been made of record.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-34 are rejected under 35 U.S.C. 102(e) as being anticipated by Gallucci et al (USP 6,495,079).

Gallucci et al discloses the use of a sulfonated polyester ionomer resin in a colored drawn polyamide or polyester fiber results in improved color strength and appearance; sodium sulfoisophthalate polybutylene terephthalate copolymers when melt blended with synthetic polyamides or polyesters are shown to enhance color strength in drawn fibers, in addition the sulfonated polyesters reduce color strength variation in colored fibers made with different batches of colorant which anticipates the claimed invention. See abstract; col. 3, lines 45-67; col. 4, lines 1-67; col. 5, lines 1-67; col. 6, lines 1-67; col. 7, lines 1-6, 7-62; the examples; the claims.

The patentee teaches at col. 7, lines 1-15, that the melt formulation containing the polyester ionomer may contain other components; these may include antioxidants, UV stabilizers, anti-ozonants, soil-proofing agents, stain-proofing agents, antistatic agents or additives, antimicrobial agents, lubricants, melt viscosity enhancers, flame retardants and processing aids. A formulation used comprises 1) a matrix polymer selected from the fiber-forming polyamides and fiber-forming polyesters, 2) a colorant system comprising one or more colorants selected from inorganic and/or organic colorants, said colorant system optionally includes one or more carrier resins for the pigments, 3) one or more sulphonated polyester copolymers. See col. 6, lines 48-67; col. 7, lines 1-25, 26-63.

Prior Art

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The references are cited to show the state of the art of additive-

Art Unit: 1711

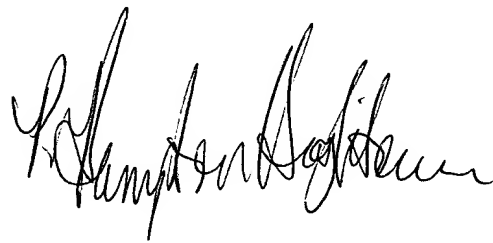
containing polymeric composition and methods of use to produce filaments, yarn and carpet; Caswell and Jones.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia Hightower whose telephone number is (703) 308-2434. The examiner can normally be reached on Monday - Friday from 9:30 A.M. – 6:00 P.M.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Seidleck can be reached on 703-308-2462. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-308-0661 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

P. Hightower:mn
March 31, 2003

A handwritten signature in black ink, appearing to read 'P. Hampton-Hightower', is written over a faint, larger signature.

P. Hampton-Hightower
Primary Examiner
Art Unit 1711